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JOSEPH F. SPANOL, JR.  
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No. 90-635

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In The  
Supreme Court of the United States  
October Term, 1990

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NAVAJO TAX COMMISSION,

*Petitioner,*

v.

THE PITTSBURG & MIDWAY  
COAL MINING COMPANY,

*Respondent.*

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PETITIONER'S REPLY TO RESPONDENT'S  
BRIEF IN OPPOSITION

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Respondent's false claim about the position of the United States in this litigation demands a reply. The Bureau of Indian Affairs ("BIA") is the agency of the United States with the greatest knowledge and expertise about this litigation. In the District Court, a BIA representative stated BIA's position: the Addition boundaries have not been diminished. Tr. 864. This testimony is consistent with both the early official pronouncements of

the Indian Office (see Pet. 9-10)<sup>1</sup> and with more recent opinions of Interior officials. Ex. AF-6(a) (1975 opinion of the Window Rock Field Solicitor), Ex. AF-6(b) (1982 letter of the Field Solicitor), AF-6(c) (1986 decision of BIA's Navajo Area Office).

While the official position of the BIA has been practically unwavering for 80 years, the current position of the Justice Department is unclear. In 1987, at New Mexico's request, the Justice Department filed a brief *amicus curiae* supporting diminishment in a *habeas corpus* case. See Opp. 22. However, after Petitioner Navajo Tax Commission prevailed on the diminishment issue in the District Court, and after consultation with Navajo representatives, the Justice Department declined to take any position on the diminishment issue in the instant case, despite strenuous lobbying efforts of Respondent to gain federal support.

Petitioner agrees that various federal officials at different times have held differing views about the jurisdictional status of the Addition. See Pet. 15-17, 54a. Lower court judges have had like differences; contrast the Court of Appeals panel in this case with the District Judge and with the four Court of Appeals judges (Ebel, Logan, McKay, and Seymour) who voted to rehear the case

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<sup>1</sup> Accord Kelly, *The Navajo Indians and Federal Indian Policy* (1968), at 26 (map showing all of the Addition within the "Jurisdictional Boundaries of the Navajo Reservation to 1927"), cited in *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, \_\_\_ n.12 (1989).

*en banc*. This very confusion is an important reason for a definitive resolution of the issue by this Court.

Respectfully submitted,

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